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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

GERARDO HERNANDEZ,

Plaintiff,

vs.

SF BAY FUEL LLC dba GRAND  
GASOLINE aka KWIK SERVE,

Defendant.

) No.  
)  
) **COMPLAINT ASSERTING DENIAL OF**  
) **RIGHT OF ACCESS UNDER THE**  
) **AMERICANS WITH DISABILITIES ACT**  
) **FOR INJUNCTIVE RELIEF, DAMAGES,**  
) **ATTORNEYS' FEES AND COSTS (ADA)**

**I. SUMMARY**

1. This is a civil rights action by plaintiff GERARDO HERNANDEZ ("Plaintiff") for discrimination at the building, structure, facility, complex, property, land, development, and/or surrounding business complex known as:

Grand Gasoline aka Kwik Serve  
209 El Camino Real  
South San Francisco, CA 94080  
(hereafter "the Facility")

2. Plaintiff seeks damages, injunctive and declaratory relief, attorney fees and costs, against SF BAY FUEL LLC dba GRAND GASOLINE aka KWIK SERVE ("Defendant"), pursuant to Title III of the Americans with Disabilities Act of 1990 (42 U.S.C. §§ 12101 et seq.) ("ADA") and related California statutes.

**II. JURISDICTION**

3. This Court has original jurisdiction under 28 U.S.C. §§ 1331 and 1343 for ADA claims.

4. Supplemental jurisdiction for claims brought under parallel California law – arising from the same nucleus of operative facts – is predicated on 28 U.S.C. § 1367.

5. Plaintiff’s claims are authorized by 28 U.S.C. §§ 2201 and 2202.

**III. VENUE**

6. All actions complained of herein take place within the jurisdiction of the United States District Court, Northern District of California, and venue is invoked pursuant to 28 U.S.C. § 1391(b), (c).

**IV. PARTIES**

7. Defendant owns, operates, and/or leases the Facility, and consists of a person (or persons), firm, and/or corporation.

8. Plaintiff is substantially limited in his ability to walk, and must use a wheelchair for mobility. Consequently, Plaintiff is “physically disabled,” as defined by all applicable California and United States laws, and a member of the public whose rights are protected by these laws.

**V. FACTS**

9. The Facility is open to the public, intended for non-residential use, and its operation affects commerce. The Facility is therefore a public accommodation as defined by applicable state and federal laws.

10. Plaintiff lives approximately 20 miles from the Facility and visited the Facility on or about April 4, 2019 to purchase fuel for his vehicle. During his visit to the Facility, Plaintiff encountered the following barriers (both physical and intangible) that interfered with, if not outright denied, Plaintiff’s ability to use and enjoy the goods, services, privileges and accommodations offered at the Facility:

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1 a) Plaintiff parked at the gas pump, and could not find an accessible route  
2 of travel from there to the entrance of the store. There was a curb in  
3 front of the entrance that he could not wheel over.

4 b) Since Plaintiff could not go into the store to ask for help, and the card  
5 reader on the pump was not working, Plaintiff pushed the help button at  
6 the pump and waited for several minutes, but no one came out to assist  
7 him. He was not able to get gas at the Facility and had to go elsewhere.

8 11. The barriers identified in paragraph 10 herein are only those that Plaintiff  
9 personally encountered. Plaintiff is presently unaware of other barriers which may in fact exist  
10 at the Facility and relate to his disabilities. Plaintiff will seek to amend this Complaint once  
11 such additional barriers are identified as it is Plaintiff's intention to have all barriers which  
12 exist at the Facility and relate to his disabilities removed to afford him full and equal access.

13 12. Plaintiff was, and continues to be, deterred from visiting the Facility because  
14 Plaintiff knows that the Facility's goods, services, facilities, privileges, advantages, and  
15 accommodations were and are unavailable to Plaintiff due to Plaintiff's physical disabilities.  
16 Plaintiff enjoys the goods and services offered at the Facility, and will return to the Facility  
17 once the barriers are removed.

18 13. Defendant knew, or should have known, that these elements and areas of the  
19 Facility were inaccessible, violate state and federal law, and interfere with (or deny) access to  
20 the physically disabled. Moreover, Defendant has the financial resources to remove these  
21 barriers from the Facility (without much difficulty or expense), and make the Facility  
22 accessible to the physically disabled. To date, however, Defendant refuses to either remove  
23 those barriers or seek an unreasonable hardship exemption to excuse non-compliance.

24 14. At all relevant times, Defendant has possessed and enjoyed sufficient control  
25 and authority to modify the Facility to remove impediments to wheelchair access and to  
26 comply with the 1991 ADA Accessibility Guidelines and/or the 2010 ADA Standards for  
27 Accessible Design. Defendant has not removed such impediments and has not modified the  
28 Facility to conform to accessibility standards. Defendant has intentionally maintained the

1 Facility in its current condition and has intentionally refrained from altering the Facility so that  
2 it complies with the accessibility standards.

3 15. Plaintiff further alleges that the (continued) presence of barriers at the Facility is  
4 so obvious as to establish Defendant's discriminatory intent. On information and belief,  
5 Plaintiff avers that evidence of this discriminatory intent includes Defendant's refusal to adhere  
6 to relevant building standards; disregard for the building plans and permits issued for the  
7 Facility; conscientious decision to maintain the architectural layout (as it currently exists) at the  
8 Facility; decision not to remove barriers from the Facility; and allowance that Defendant's  
9 property continues to exist in its non-compliant state. Plaintiff further alleges, on information  
10 and belief, that the Facility is not in the midst of a remodel, and that the barriers present at the  
11 Facility are not isolated or temporary interruptions in access due to maintenance or repairs.

## 12 VI. FIRST CLAIM

### 13 Americans with Disabilities Act of 1990

#### 14 Denial of "Full and Equal" Enjoyment and Use

15 16. Plaintiff re-pleads and incorporates by reference the allegations contained in  
16 each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

17 17. Title III of the ADA holds as a "general rule" that no individual shall be  
18 discriminated against on the basis of disability in the full and equal enjoyment (or use) of  
19 goods, services, facilities, privileges, and accommodations offered by any person who owns,  
20 operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).

21 18. Defendant discriminated against Plaintiff by denying Plaintiff "full and equal  
22 enjoyment" and use of the goods, services, facilities, privileges and accommodations of the  
23 Facility during each visit and each incident of deterrence.

#### 24 Failure to Remove Architectural Barriers in an Existing Facility

25 19. The ADA specifically prohibits failing to remove architectural barriers, which  
26 are structural in nature, in existing facilities where such removal is readily achievable. 42  
27 U.S.C. § 12182(b)(2)(A)(iv).

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20. When an entity can demonstrate that removal of a barrier is not readily achievable, a failure to make goods, services, facilities, or accommodations available through alternative methods is also specifically prohibited if these methods are readily achievable. *Id.* § 12182(b)(2)(A)(v).

21. Here, Plaintiff alleges that Defendant can easily remove the architectural barriers at the Facility without much difficulty or expense, and that Defendant violated the ADA by failing to remove those barriers, when it was readily achievable to do so.

22. In the alternative, if it was not “readily achievable” for Defendant to remove the Facility’s barriers, then Defendant violated the ADA by failing to make the required services available through alternative methods, which are readily achievable.

#### Failure to Design and Construct an Accessible Facility

23. Plaintiff alleges on information and belief that the Facility was designed and constructed (or both) after January 26, 1993 – independently triggering access requirements under Title III of the ADA.

24. The ADA also prohibits designing and constructing facilities for first occupancy after January 26, 1993, that aren’t readily accessible to, and usable by, individuals with disabilities when it was structurally practicable to do so. 42 U.S.C. § 12183(a)(1).

25. Here, Defendant violated the ADA by designing and constructing (or both) the Facility in a manner that was not readily accessible to the physically disabled public – including Plaintiff – when it was structurally practical to do so.<sup>1</sup>

#### Failure to Make an Altered Facility Accessible

26. Plaintiff alleges on information and belief that the Facility was modified after January 26, 1993, independently triggering access requirements under the ADA.

27. The ADA also requires that facilities altered in a manner that affects (or could affect) its usability must be made readily accessible to individuals with disabilities to the maximum extent feasible. 42 U.S.C. § 12183(a)(2). Altering an area that contains a facility’s

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<sup>1</sup> Nothing within this Complaint should be construed as an allegation that Plaintiff is bringing this action as a private attorney general under either state or federal statutes.

primary function also requires making the paths of travel, bathrooms, telephones, and drinking fountains serving that area accessible to the maximum extent feasible. Id.

28. Here, Defendant altered the Facility in a manner that violated the ADA and was not readily accessible to the physically disabled public – including Plaintiff – to the maximum extent feasible.

#### Failure to Modify Existing Policies and Procedures

29. The ADA also requires reasonable modifications in policies, practices, or procedures, when necessary to afford such goods, services, facilities, or accommodations to individuals with disabilities, unless the entity can demonstrate that making such modifications would fundamentally alter their nature. 42 U.S.C. § 12182(b)(2)(A)(ii).

30. Here, Defendant violated the ADA by failing to make reasonable modifications in policies, practices, or procedures at the Facility, when these modifications were necessary to afford (and would not fundamentally alter the nature of) these goods, services, facilities, or accommodations.

#### Failure to Maintain Accessible Features

31. Defendant additionally violated the ADA by failing to maintain in operable working condition those features of the Facility that are required to be readily accessible to and usable by persons with disabilities.

32. Such failure by Defendant to maintain the Facility in an accessible condition was not an isolated or temporary interruption in service or access due to maintenance or repairs.

33. Plaintiff seeks all relief available under the ADA (i.e., injunctive relief, attorney fees, costs, legal expense) for these aforementioned violations. 42 U.S.C. § 12205.

### **VII. SECOND CLAIM**

#### **Unruh Act**

34. Plaintiff re-pleads and incorporates by reference the allegations contained in each of the foregoing paragraphs, and incorporates them herein as if separately re-pled.

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I verify under penalty of perjury that the foregoing is true and correct.

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Gerardo Hernandez

I attest that the original signature of the person whose electronic signature is shown above is maintained by me, and that his concurrence in the filing of this document and attribution of his signature was obtained.

Zachary M. Best, Attorney for  
Plaintiff, Gerardo Hernandez